

MICHAEL S. DEERING

IBLA 78-8

Decided December 19, 1977

Appeal from a decision of the Oregon State Office, Bureau of Land Management dated August 23, 1977, reappraising the fair market rental charges for Special Land Use Permit Oregon 010527.

Vacated and remanded.

1. Appraisals -- Evidence: Burden of Proof -- Special Use Permits

A Bureau of Land Management appraisal from which the annual rental for a special use permit is calculated will be upheld unless the permittee shows by substantial and positive evidence, specific errors in the method or facts on which the appraisal is based.

2. Appraisals -- Evidence: Sufficiency -- Special Use Permits

Evidence that Forest Service land has been appraised at lower values and leased at lower rates than allegedly comparable Bureau of Land Management land will not suffice to overturn the latter's practices where no specific error in its methods has been shown.

3. Appraisals -- Evidence: Sufficiency -- Special Use Permits

Where a permittee introduces an alternative comparative sales analysis in opposition to that of the Bureau of Land Management, he

must show by substantial and positive evidence why his analysis is valid and the Bureau of Land Management's invalid. Where the issue rests on the assertion of each party's expert on the validity of his respective analysis and the record fails to contain evidence by which this deadlock can be resolved, the case will be remanded for further factfinding.

APPEARANCES: Ralf H. Erlandson, Esq., Milwaukee, Oregon, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Michael S. Deering appeals from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated August 23, 1977, reappraising the fair market rental charges for Special Land Use Permit Oregon 010527. Involved is a 0.53-acre revested O&C tract withdrawn as a powersite reserve and located in sec. 23, T. 2 S., R. 6 E., Willamette Meridian, Oregon.

On August 1, 1955, BLM issued a special land use permit (SLUP) authorizing use of the land for residential purposes. Several individuals have occupied a neat, well-constructed "summer home" on the tract in the intervening years, renewing the SLUP at periodic intervals. Appellant, on June 2, 1977, became assignee of the SLUP covering the period August 1, 1975, to July 31, 1980. Prior to the assignment, annual rental charges on the SLUP were \$ 230.

Shortly before the assignment, BLM reviewed the rental charges and on May 24, 1977, issued an appraisal fixing the charge at \$ 1,000 annually, based on an appraisal of \$ 10,000 for the fair market value of the parcel.

Three times previously, BLM had appraised the parcel. An informal 1960 appraisal fixed the parcel's value at \$ 500, resulting in a rental of \$ 25 annually. In 1965, the appraised value was set at \$ 1,700 and the annual payment \$ 120. Revision of these values based on the value trend in the area occurred in 1970, yielding figures of \$ 2,443 for the value and \$ 230 for the rental.

All four of the appraisals relied on the comparative sales method to arrive at the parcel's fair market value, from which the annual rental was calculated with reference to the rate of return

expected by investors in the area. The 1977 appraisal was based on the following comparable sales:

<u>Sale</u>	<u>Date</u>	<u>Size (acres)</u>	<u>Amount</u>	<u>Access</u>
1.	listing <u>1/</u>	ca.1	\$ 13,600	-
2.	3/1/77	.66	\$ 11,500	-
3.	3/3/76	.5	\$ 11,000	-
4.	12/15/76	.41	\$ 9,750	-

<u>Power</u>	<u>Water</u>	<u>Septic</u>	<u>Location</u>	<u>Overall</u>
1. 0	0	0	0	0
2. 0	-	-	0	-
3. 0	-	-	0	-
4. 0	-	0	0	0

[0 = no difference between subject lot and comparable lot; - = subject lot less desirable than comparable lot]:

The BLM appraisal report contained a detailed comparative analysis of Appellant's and the comparative properties and concluded that the fair market value of the subject property was \$ 10,000. An expected rate of return of 10.5 percent was derived by adding the prevailing real estate mortgage rate (9.5 percent) and tax rate (1 percent), which multiplied by the fair market value gave the annual rental (\$ 10,000 x 10.5% = \$ 1,050, SAY \$ 1,000).

Appellant filed a protest to the reappraisal on June 29, 1977. The matter was heard on July 20, 1977, a decision rendered adverse to Appellant on August 23, 1977, and a notice of appeal filed on September 22, 1977.

In his statement of reasons, Appellant alleges that BLM's findings were: "1. arbitrary and capricious; 2. so grossly erroneous as to imply bad faith; and 3. not supported by substantial evidence." In particular, Appellant challenges BLM's statement that: "the protestant submitted no information on rental of lands, or methods of arriving at rentals from appraised values. Neither was information submitted to show that the comparative sales used in the

1/ This is the price asked in the real estate listing, not an actual sales price. As Appellant points out (Tr. 43), BLM should perhaps have considered that this property had been sold less than a year previously at \$ 11,000. This observation does not, however, substantially affect the outcome.

reappraisal were not comparable nor the comparative analysis in error."

Appellant alleges that the fair market value of the parcel is no more than \$ 4,500 and that the rental should be no more than \$ 210 per year.

An evaluation of Appellant's allegations requires that we consider the basic principles of appraisal within the context of Federal land law. The Federal Land Policy and Management Act of 1976, section 101(9), 43 U.S.C. § 1701(9) (1977), provides: "the United States [shall] receive fair market value of the use of the public lands and their resources." This provision elevates to statutory level the policy already embodied in the general regulation 43 CFR 1725.2-1(a) and the specific one dealing with SLUPs, 43 CFR 2920.4(a) (1976). In implementing this policy, the Department of the Interior has incorporated as a guide, Uniform Appraisal Standards for Federal Land Acquisitions (Interagency Land Acquisition Conference, 1973) (Uniform Standards), 602 DM 1.1 (1976), which recommends the comparative approach as the basis for fair appraisals:

[T]he comparative approach * * * is the only approach to value that reflects the supply and demand in actual trading in the marketplace[;] it usually develops the most acceptable and convincing evidence of the fair market value of the property * * *. It is essential * * * to compare the property under appraisal with properties recently sold on the basis of * * * all matters which have an effect on the market value pertaining to relative desirability.

Uniform Standards at 9-10; see BLM Manual 9311.23.D (1977).

Where the value to be determined is a rental value, but no comparable rental properties are available for comparison, comparable sales may be used as a basis for calculating comparable rental values. The result is a hybrid between the comparative approach and the income approach. See Uniform Standards at 13, BLM Manual 9311.23.F (1977). In such a case, the sales price of the property is treated as if it were the capitalization of an investment from which the income (i.e., rental value) may be calculated by applying a reasonable rate of return, Four States Television, Inc., 32 IBLA 205 (1977); Junction Oil Company, 28 IBLA 183 (1976).

[1] BLM's appraisal of the value of Appellant's SLUP will be upheld unless Appellant has shown by substantial and positive evidence of error in the method or fact on which the appraisal is based, Henry O. Woodruff, 24 IBLA 90 (1976); Harold Kyllonen, 16 IBLA 86,

81 I.D. 364 (1974). Appellant has the burden of pointing to specific errors in the appraisal report, Park Central Water District, 28 IBLA 368, 84 I.D. 87 (1977).

The BLM presented its finding through the appraiser who had prepared the appraisal report, which is part of the record. This report, approved by a reviewing appraiser, who also testified, is a thorough explanation of the method used and the comparable properties relied upon in establishing the rental value of the subject property.

Appellant does not dispute that BLM used the approved comparable sales method for determining fair market value, nor does he question BLM's method for converting fair market values into fair rental values. Instead, Appellant focuses on whether BLM applied these methods competently. At the July 20 hearing, Appellant pressed several lines of attack to show that BLM's appraisal was erroneous. Appellant presented his evidence through Harold Cox, a real estate broker with long experience in the area.

[2] Appellant introduced evidence that the Forest Service had appraised some 300 to 400 parcels of its own land in the region at between \$ 3,700 and \$ 4,200, and that actual rentals of some 600 lots under their jurisdiction were from \$ 125 to \$ 210 per year (Tr. 54-55, 65-66). Appellant alleged that these parcels were comparable to his own. Appellant did not present any analysis demonstrating the Forest Service's method of appraisal or its method of deriving rental rates from appraised values. Without this supporting information, we cannot assume that the Forest Service is making its charges on a fair market value criteria which is correct under 602 DM 1.1 or some other method, and that the BLM is wrong. Thus this data, while of some relevance, does not represent a specific showing of error in the BLM appraisal.

[3] Appellant also presents data on the sale of four properties which Appellant claims are comparable to the subject property (Tr. 60-65). These were:

Sale Date Size (acres) Amount

1.	2/24/76	.5	\$ 3,000
2.	7/20/77	.84	\$ 5,500
3.	5/24/77	3.09	\$ 25,000
4.	?/?/77	.15	\$ 2,950

From these data, Appellant computes a fair market value of \$ 3,500 to \$ 4,500 for his parcel (Tr. 57-58). Here again, while Appellant raises a substantial question as to the validity of BLM's appraisal, he does not provide sufficient information for us to find that his sales are more comparable to the subject parcel than BLM's or even that his sales should be included together with BLM's in calculating fair market value. On the other hand, by providing an alternative comparative analysis to BLM's, Appellant has gone a long way toward providing the kind of substantial and positive evidence necessary to overturn a BLM appraisal. The BLM offered no evidence to rebut Appellant's contention that the sales it offered were comparable.

Our examination of the record convinces us that we face a conflict of expert opinion and that the record does not afford us sufficient evidence to resolve this conflict on appeal. A determination based on the present state of the record would require a degree of conjecture that does not seem warranted. We therefore remand this case for further factual determination. See U.S. v. Pittsburgh Pacific Company, 30 IBLA 388, 84 I.D. 282 (1977); U.S. v. Guzman, 18 IBLA 109, 81 I.D. 685 (1974); U.S. v. DeZan, A-30515 (July 1, 1968). On remand, the parties should account for the discrepancy between the values of the two sets of proffered comparable sales. They should explain why one or the other set should be excluded from consideration. It would be helpful if the parties would elaborate on the market conditions in the area, how the value of the house on the subject property entered into the appraisals, and the significance of the river frontage of the subject and comparable properties. See, Uniform Standards at 35; BLM Manual 9311.24.D (1977). In addition, Appellant should prescribe a method for converting his fair market value into a rental value. 2/

One point in particular deserves special attention. At the hearing, Appellant expended considerable effort in attempting to show that BLM's comparative sales were not actually comparable to Appellant's parcel. Appellant developed his contentions both while cross-examining the BLM's expert, Don Kreitman (Tr. 10, 20-25, 30-33), and through the direct testimony of his own expert Harold Cox (Tr. 44-54). The alleged differences were as follows: (1) Appellant's

2/ Appellant seems to have imported the \$ 210 directly from the Forest Service schedule. BLM's 10-percent relationship between appraised value and rental fails to yield \$ 210 even when Appellant's fair market value figures are used. Similarly applying 10.5 percent to Cox's evaluation of \$ 4,500 would yield a rental of approximately \$ 475.

parcel was functionally smaller than the comparative sales since much of his parcel consisted of a steep slope unsuitable for occupation; (2) access to the present water supply and public roadway depends on easements at the sufferance of a neighbor; and (3) the property might not be eligible for septic tank approval were the matter ever to be put in issue in the future. Furthermore, Appellant's SLUP contains three restrictions, which Appellant claims diminishes the value of his property. These are that the public may cross Appellant's land to reach the Sandy River, that the Government has the power to take the land for powersite purposes, and that no improvements may be made on the property without BLM approval.

An examination of the BLM's appraisal report and testimony reveal that these factors were taken into account in arriving at the fair market value. BLM has simply concluded that they would not substantially diminish market value, whereas Appellant's expert believes otherwise. Again, we cannot resolve such a deadlock of the experts without more information. 3/

Appellant makes one further assertion worthy of note. His expert argues (Tr. 50-51) that the appraisal should be diminished to take into account the fact that ownership of a mere "leasehold" is less desirable than ownership of property in fee. This argument mistakes the purpose of the appraisal. This case does not involve a sale of property; it is the value of a permit authorizing use of the property for residential purposes that is to be evaluated. The method we have approved for calculating rental values using expected investment return rates provides a means for computing the rental value of the permit from the market value of the lot. Using expected investment returns in this context presupposes that the "investor" owns the "investment property" in fee.

3/ We note, for example, that the presence of these undesirable factors has not prevented the SLUP in question from being assigned four times over a 20-year period. On the other hand, we note that in its 1965 appraisal BLM discounted the fair market value of the lot from \$ 3,000 to \$ 1,690 to take into account undesirable features of the property.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and remanded for further proceedings consistent herewith.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge

